

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:
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Date:
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TY:

LEGEND:

Taxpayer:
Real Property:
\$X
\$Y
\$Z
Year 1
Year 2

Dear M

This letter responds to a request for a private letter ruling filed on behalf of Taxpayer, concerning the application of section 453(d) of the Internal Revenue Code to the following set of facts.

Taxpayer is a cash basis limited liability corporation. In Year 1, Taxpayer sold Real Property in exchange for \$Y in cash to be made in three annual installment payments. In Year 1, Taxpayer received \$X in cash. All parties involved in the sales transaction understood the transaction to be an installment sale. When Taxpayer's federal income tax return was prepared it was understood between Taxpayer and Taxpayer's accountant that the sale of Real Property would be reported using the installment method. However, Taxpayer's Year 1 tax return filed in April Year 2 erroneously reported the entire gain of \$Z from the sale of the Real Property and effectively elected Taxpayer out of using the installment method to report the gain from the sale of Real Property.

The mistake in reporting the gain was discovered in June Year 2 when Taxpayer's accountant prepared Taxpayer's Form 1040ES for Year 2. Taxpayer's accountant promptly submitted a private letter ruling request on behalf of Taxpayer in June Year 2 requesting permission to revoke the election out of the installment method.

Section 453(a) provides that income from an installment sale shall be taken into account under the installment method.

Section 453(d)(1) provides that section 453(a) will not apply to any disposition if the taxpayer elects to not have section 453(a) apply to such disposition.

Section 453(d)(3) provides that an election made with respect to any disposition may be revoked only with the consent of the Secretary.

Section 15a.453-1(d)(4) of the Income Tax Regulations provides that, generally, an election out of section 453 is irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. A revocation is retroactive. A revocation will not be permitted when one of its purposes is the avoidance of federal income taxes, or when the taxable year in which any payment was received has closed.

A taxpayer will not be permitted to revoke its election out of the installment method merely because the taxpayer has the benefit of hindsight, which allows the taxpayer to see that a revocation of an election would be beneficial. Hindsight includes those situations where the taxpayer's change of mind is prompted by changed circumstances, subsequent events, or occurrences beyond the taxpayer's control.

In the present case, the facts indicate that Taxpayer's intent was to use the installment method to pay tax on the sale of Real Property. Based on all of the facts presented by Taxpayer, its request to revoke its election out of the installment method does not appear to be based on hindsight. It was through an inadvertent error by the accountant that Taxpayer reported the full gain from the sale on its return for Year 1. Taxpayer then acted diligently in requesting a revocation by filing its request shortly after the error was discovered. Finally, the requested revocation will not prejudice the interest of the government, since the revocation is not motivated by tax avoidance.

For the foregoing reasons, we grant Taxpayer the permission to revoke its election out of using the installment method with respect to the gain from the sale of Real Property reported on its Year 1 federal income tax return. To revoke this election, Taxpayer must file an amended federal income tax return for the taxable year of the sale and must attach a copy of this letter to the amended return.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Sincerely,

J. Charles Strickland
Senior Technician Reviewer, Branch 5
Office of Chief Counsel
(Income Tax and Accounting)

cc: